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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 832

HELEN ELIZABETH McCLURE INNIS,
Petitioner,

vs.

UNITED MERCANTILE AGENCIES, INC.,
Respondent.

ANSWER OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ROBERT E. CLEMENCE,
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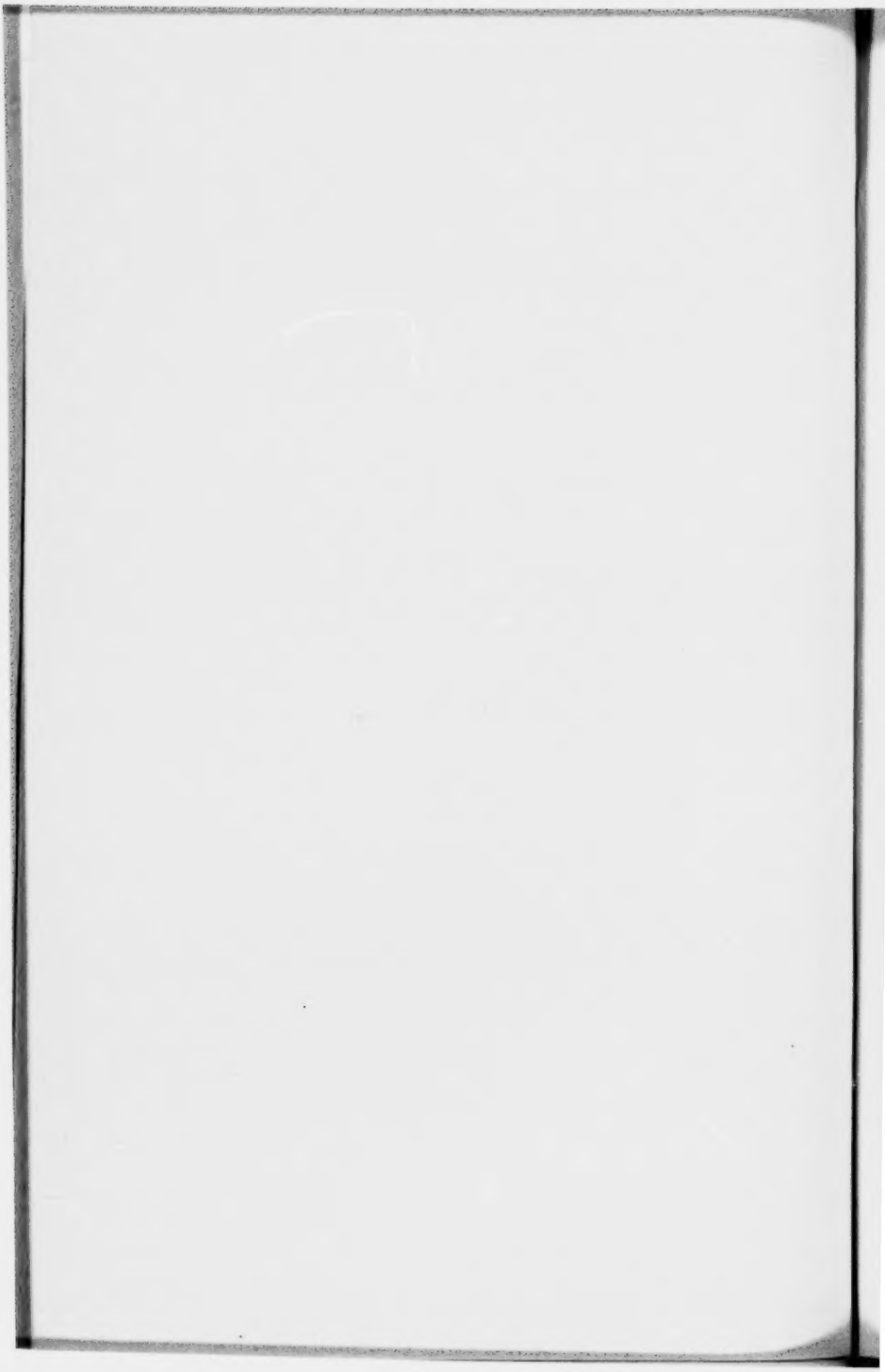

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ANSWER OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The respondent respectfully shows, in answer to the petition for writ of certiorari, as follows:

I.

Issues of the Case.

This is a suit in equity, seeking injunction against collection of a Two Thousand Dollar judgment obtained in a law action in the State Court of Indiana. The petitioner was one of the defendants in the case of Glenn B. Hines, Receiver, etc., *vs.* Alys H. Ankeny, *et al.*, Law No. 4408 in the Tippecanoe Circuit Court of Indiana, filed March 17, 1935.

Petitioner was duly served with personal summons more than ten days previous to April 30, 1935, the date set for appearance. On November 27, 1935, petitioner was declared a voluntary bankrupt. The claim of plaintiff was scheduled as a pending suit. No Trustee was appointed; no claim was proven in the bankruptcy; no stay of pending suit was issued out of the bankruptcy court.

On March 25, 1936, petitioner was discharged as a bankrupt. No appearance was made by petitioner in the lawsuit in the Tippecanoe Circuit Court, and no answer of bankruptcy was filed in bar of action.

On October 27, 1939, petitioner was defaulted and judgment entered against her for $2,000.00 in said law case. On the 23rd day of April, 1942, the respondent purchased said judgment, together with other assets held by said Receiver, the plaintiff in said case number 4408, and respondent ordered execution on said judgment in December, 1942, to the Sheriff of Fountain County, Indiana. Sale of petitioner's real estate was advertised for January 21, 1943, pursuant to said execution in Fountain County.

January 20, 1943, the United States District Court for the Southern District of Indiana enjoined said Sheriff's sale; and on June 16, 1943, said injunction was made permanent. Appeal was taken to the Circuit Court of Appeals for the Seventh Circuit, where the judgment of the United States District Court was reversed, from which petitioner now seeks certiorari.

II.

Points Relied on By Respondent.

1. The respondent contends that the decision of the Circuit Court of Appeals for the Seventh Circuit in this case is in harmony with the settled law of the case. A discharge in bankruptcy is a personal defense as to the bankrupt and must be pleaded to avail herself of the discharge, and, if not pleaded, is waived.

2. The case of *Holmes* v. *Rowe*, 97 Fed. (2nd) 537, from the Ninth Circuit Court of Appeals, is distinguished on the facts from the instant case, as shown by the opinion of the Circuit Court of Appeals in this case.

3. This court has settled all questions of federal law in the case at bar in the opinion of *Dimmock* v. *Revere Copper Company*, 117 U. S. 559.

4. The decision of the Circuit Court of Appeals in the case at bar is in harmony with the late decision of *Helms* v. *Holmes*, 129 Fed. (2nd) 263, decided by the Fourth Circuit Court of Appeals.

5. The decision of the Circuit Court of Appeals in the case at bar is also in harmony with the law of Indiana on the same subject, as set out in the cases of

Bowen v. *Eichel*, 91 Ind. 22, and

First National Bank of Goodland v. *Pothuisje*, 217 Ind. 1, 25 N. E. (2nd) 436.

6. The decision of the Circuit Court of Appeals in no way conflicts with *the Local Loan Company* v. *Hunt case*, 292 U. S. 234, 78 L. Ed. 1230. In the latter case the appellee had no adequate remedy but to appeal to an equity court. No judgment had been rendered against him, and no adequate means of defense was afforded him. In the

case at bar petitioner had three years to file an answer of discharge in bankruptcy in the state court, but failing to file such plea she waived that personal defense, or any defense. See *Ayrshire Coal Co.* v. *Thurman*, 127 N. E. 810 Syl. 5 & 6, p. 812.

7. A court of equity will not recognize a suit to enjoin an action or proceeding at law where the defendant has failed to pursue or has waived her remedies at law.

8. The settled rule in equity is that ignorance of the law is no defense; and petitioner's alleged belief that her discharge in bankruptcy *ipso facto* discharged her in the State's law court is no ground for an appeal to a court of equity.

9. The respondent, being a *bona fide* assignee for value of the original judgment creditor in the law court, is entitled to protection against the petitioner, whose own delay in seeking relief from the judgment has caused respondent to change its position with reference thereto. See *Lucking, et al.* v. *Shram*, 117 Fed. (2nd) 160, op. 162.

III.

Summary.

All of the questions of federal law applicable to the case at bar have been settled by this court ever since the decision in the case of *Dimmock* v. *Revere Copper Company*, 117 U. S. 559, and all decisions since that time have followed the doctrine there laid down.

To afford petitioner relief in this case, all former decisions of this court on the identical proposition involved would have to be reversed and the settled law in such cases would be entirely upset, and left in a state of confusion and uncertainty.

Since the decision of the Seventh Circuit Court of Appeals in the case at bar is in harmony with these established rules, the respondent claims that the petition for writ of certiorari should be denied.

Respectfully submitted,

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